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CLERK, U.S. DISTRICT COURT
NORFOLK, VA

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

In re:

COURT OPERATIONS UNDER THE EXIGENT
CIRCUMSTANCES CREATED BY THE OUTBREAK
OF CORONAVIRUS DISEASE 2019 (COVID-19) :
VACCINATION & TESTING POLICY

Case No. 2:20mc7

General Order No. 2021-12

The United States District Court for the Eastern District of Virginia has continued to closely monitor the outbreak of Coronavirus Disease 2019 (COVID-19), as well as the developing guidance from the Centers for Disease Control and Prevention (CDC) and state and local health authorities. Notwithstanding a well-established COVID-19 vaccination effort, many adult Americans eligible for vaccination remain unvaccinated, and the COVID-19 Delta variant has caused a dramatic spike in COVID-19 cases and hospitalizations across the United States, Virginia, and this District. The risk posed by the spread of the Delta variant supports the adoption of a vaccination and testing policy applicable to employees and contractors of the U.S. District Court and U.S. Probation Office.¹

On July 29, 2021, President Biden announced that all qualifying federal employees, as well as federal contractors, are required to be vaccinated against COVID-19 or be subject to certain

¹ The U.S. Bankruptcy Court for the Eastern District of Virginia will enter its own Order outlining its vaccination and testing policy.

health and safety requirements. Similarly, on August 5, 2021, the Governor of Virginia issued an Executive Directive indicating that all Virginia executive branch employees and state contractors are required to be vaccinated against COVID-19 or be subject to certain health and safety requirements. See <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/ED-18-Ensuring-a-Safe-Work-Place.pdf> (last visited Aug. 13, 2021). Both the federal policy and the Virginia policy require individuals that are not fully vaccinated to: (1) undergo routine COVID-19 testing; and (2) wear a mask while indoors and conducting public business. Both policies also recognize that religious and medical exemptions to vaccination may be sought.

The safety of Court employees, judges, contractors, litigants, counsel, and members of the public that enter the Courthouses and Court facilities in this District is a critical priority. Cf. Federal Judiciary COVID-19 Recovery Guidelines, at 2 ("The health and welfare of each Judiciary employee, contractor, and member of the public that enters our facilities should be paramount in the decisions that are made as these [COVID-19 recovery] guidelines are implemented.").² Many Court employees

² Similar to the instant General Order, as pandemic conditions have evolved, this Court has issued multiple prior General Orders aimed at protecting the safety of employees and other individuals working in or visiting our Courthouses and facilities, drawing on guidance from the CDC, the Governor of Virginia, and state and local health officials. See, e.g., Gen. Order Nos. 2020-12, 2020-16, 2021-01, 2021-06, 2021-11.

interact directly with the public on a daily basis, and the importance of creating an environment that allows the Court to satisfy its constitutional mission, while at the same time avoiding danger to those individuals ordered to appear in our Court, cannot be overstated. This Court, therefore, hereby adopts a vaccination and testing policy consistent with the policy adopted by the President, the Governor of Virginia, and at least five other federal district courts, multiple federal bankruptcy courts, and at least one federal appellate court.³

Employees and contractors of the U.S. District Court, including the Clerk's Office, U.S. Probation Office, and chambers staff, must either be vaccinated against the COVID-19 virus,⁴ or alternatively: (1) be tested for COVID-19 twice a week, separated by at least 72 hours, and provide such test results to the Court;⁵

³ Multiple public universities in Virginia have also recently adopted COVID-19 vaccination policies, subject to qualifying exemptions.

⁴ The Court acknowledges that some employees and contractors may have concerns about the safety of the available COVID-19 vaccines, and such individuals are encouraged to consult their doctor/medical provider to discuss the safety of the vaccines and the risks to themselves, their family members, and the public should they remain unvaccinated, particularly in the context of the Delta variant and potential future variants of concern.

⁵ "At-home" COVID-19 test results will not be accepted by the Court, though in light of masking requirements and the benefits of receiving timely test results, "rapid-tests" obtained through a pharmacy, health department, doctor's office, or other healthcare provider will be accepted. PCR test results will likewise be accepted. To the extent that an employee or contractor does not have an insurance plan that covers all costs associated with COVID-19 testing, no-cost testing may be available through that individual's local health department and/or through the partnership between the Virginia Department of Health and Walgreens pharmacy. See,

and (2) wear a mask while indoors in our Courthouses and Court facilities, except when alone inside a private office, which consists of an area enclosed by floor-to-ceiling walls and a closed door.⁶ Anyone with a positive test result will be subject to the then-applicable policy regarding admittance to our Courthouses and facilities.

In order to implement the instant vaccination and testing policy, all Court employees, to include all chambers staff, Probation employees, and Clerk's Office employees, as well as all contractors working for the Court, are expected to complete a vaccination attestation form, a copy of which is attached to this Order, no later than **Wednesday, August 25, 2021**. The attestation form may be submitted in paper format or by email.⁷ Clerk's Office and Probation Office employees and contractors should return such form to the individual designated by the Clerk of Court or Chief Probation Officer. Chambers staff should return their attestation form directly to their appointing Judge. Individuals indicating on the attestation form that they are in the vaccination process,

e.g., <https://www.vdh.virginia.gov/coronavirus/covid-19-testing/walgreens-partnership/> (last visited Aug. 13, 2021).

⁶ The currently in-force mask policy for vaccinated individuals is set forth in General Order No. 2021-11.

⁷ Employees currently on approved leave extending past August 25, 2021, should submit the attestation form prior to returning to work. Employees and District Court contractors that begin work after August 25, 2021, should complete the attestation form on or before their start date.

but are not yet "fully vaccinated" (defined as two weeks after receiving the second dose of a two-dose vaccine (Pfizer or Moderna) or the single-dose vaccine (Johnson & Johnson)) will be required to follow the health and safety protocols for unvaccinated individuals until they are fully vaccinated.

While all covered employees and contractors must timely submit an attestation form, exemptions to the vaccination policy will be granted for individuals with medical conditions that prevent them from being vaccinated and for individuals with sincerely held religious beliefs that prohibit them from being vaccinated. To request an exemption, an employee or contractor must submit a letter no later than **Wednesday, August 25, 2021**,⁸ requesting an exemption and providing sufficient details and/or supporting documents to permit full consideration of the request.⁹ Similar to the attestation form, employees and contractors completing an exemption request are required to provide accurate information and sign the request. The exemption request letter may be submitted by email to the appropriate Court Unit Executive or designated Court contact with "confidential" in the subject line, or may be submitted in a sealed envelope marked

⁸ Employees and contractors beginning employment/contracted work after such date may submit their exemption request at the same time that they submit their attestation form.

⁹ A request for a medical exemption should generally include documentation from a medical provider.

"confidential" and addressed to the appropriate Court Unit Executive or designated Court contact. Such requests will be considered by the Chief Judge, in consultation with the Court Unit Executive. If the employee requesting an exemption works in chambers, the request should be sent directly to the appointing Judge, who may consult with the Chief Judge as he or she deems appropriate.

With respect to those employees and contractors for whom an exemption is approved, there will still be health and safety requirements in place for the protection of all employees and visitors to our Courthouses/facilities in light of such exempt individuals' inability to receive a COVID-19 vaccine. However, rather than twice-a-week testing, as will be required for non-exempt unvaccinated employees and contractors, exempt employees and contractors will be required to be tested once a week (if an employee is on full-time telework for medical reasons, the weekly testing requirement may be suspended by the Chief Judge or appointing Judge). Exempt employees will also be required to wear a mask while in our Courthouses and Court facilities, except when alone inside a private office, which consists of an area enclosed by floor-to-ceiling walls and a closed door. The Court may consider other accommodations for those with an approved exemption, with any such case-by-case determinations to be made by the Chief Judge or appointing Judge.

Vaccine mandates, even broad statewide mandates applicable to all adults, have been long deemed constitutional by the United States Supreme Court, Jacobson v. Massachusetts, 197 U.S. 11 (1905),¹⁰ with the history of mandated inoculation dating back to the founding of our nation. This Court, however, is not mandating a vaccine for all adults, or even for all covered Court employees and contractors, but is instead adopting a vaccination and testing policy that presents two alternatives (vaccination, or twice-weekly testing coupled with masking) to promote the health and welfare of everyone who enters our Courthouses and Court facilities. Moreover, the Court will authorize "exceptions for persons who declare vaccination incompatible with their religious beliefs and persons for whom vaccination is medically contraindicated." Klaassen v. Trustees of Indiana Univ., No. 21-2326, -- F.4th --, 2021 WL 3281209, at *1 (7th Cir. Aug. 2, 2021). Such policy, consistent with the policies adopted by the President and the Governor of Virginia, is a reasonable and lawful response during a nationwide state of emergency and will promote safety in our District Court facilities during the resurgence of the deadly

¹⁰ In Jacobson, the United States Supreme Court rejected the claim that "a compulsory vaccination law is unreasonable, arbitrary, and oppressive, and, therefore, hostile to the inherent right of every freeman to care for his own body and health in such way as to him seems best," explaining that "the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint" and that there "are manifold restraints to which every person is necessarily subject for the common good." Jacobson, 197 U.S. at 26 (emphasis added).

COVID-19 virus. Cf. <https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws> (last visited Aug. 13, 2021) (discussing the lawfulness of COVID-19 vaccination and testing requirements for individuals physically entering the workplace "because an individual with the virus will pose a direct threat to the health of others").

The above vaccination and testing policy will take effect **September 1, 2021**,¹¹ and will remain in place until further Order of the Court. The Clerk of Court and Chief Probation Officer are hereby ordered to designate a representative to collect and monitor the attestation forms and the once-weekly, or twice-weekly, COVID-19 test results, which should generally be kept confidential unless there is a sufficient health and safety reason justifying their disclosure.

It is so ORDERED.


/s/

Mark S. Davis
CHIEF UNITED STATES DISTRICT JUDGE

Norfolk, Virginia
August 13, 2021

¹¹ Because September 1, 2021, falls in the middle of a workweek, non-exempt unvaccinated employees and contractors will only be required to undergo one COVID-19 test during the first week of policy implementation. Starting the following week, such individuals will be required to be tested twice each week, separated by at least 72 hours. Exempt unvaccinated employees should begin their once-weekly testing during the September 1, 2021 workweek.

**Eastern District of Virginia
Employee and Contractor
COVID-19 Vaccination Status Attestation**

Please complete and sign this self-attestation concerning your COVID-19 vaccination status. You do not need to provide any medical information on this form, nor any explanation concerning your decision to receive or not to receive a COVID-19 vaccine. For purposes of this form, being "fully vaccinated" means that two weeks have passed after receiving the second dose of a two-dose vaccine (Pfizer or Moderna) or after receiving the single-dose vaccine (Johnson & Johnson). This form must be returned to the designated Court representative by **Wednesday, August 25, 2021**.

If you believe you are entitled to an exemption from vaccination, you will need to request it in writing by **August 25, 2021**. Employees and contractors who are not vaccinated and have not received an exemption, as well as those that decline to disclose their vaccination status, will be required to undergo twice-weekly COVID-19 testing and will be required to wear masks in our Court facilities. Individuals granted an exemption must undergo once-weekly COVID-19 testing and will be required to wear masks in our Court facilities.

Name:

Court Unit: Clerk's Office Probation/Pretrial Chambers Contractor

Please choose one of the following options:

- 1. I am fully vaccinated.
- 2. I received my second dose of the Pfizer or Moderna vaccine or my single dose of the Johnson & Johnson vaccine less than two weeks ago on .
- 3. I received my first dose of the Pfizer or Moderna vaccine, and my second appointment is scheduled for .
- 4. I have not yet been vaccinated, but I have scheduled an appointment to receive my first dose of vaccine on .
- 5. I have not been vaccinated.
- 6. I decline to disclose my vaccination status.

I understand that I am required to provide accurate information on this form. I hereby affirm that I have accurately and truthfully answered the above question. I also understand that if I stated that I am fully or partially vaccinated, the Court may request documentation of my vaccination status (e.g., a copy of my vaccine card or other similar official document confirming vaccination status).

Electronic or Ink Employee/
Contractor Signature

Date